

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2972 OF 2006

SMT.INDIRABAI BHAGWANT NADKARNI

& ORS.

..APPELLANTS

V/S

PRABHAKAR S. NADKARNI & ORS.

..RESPONDENTS

A.M. KULKARNI FOR THE APPELLANTS.

RAJENDRA R. MISHRA WITH M.B. KAGALE FOR RESPOND-
ENT NOS. 1 TO 8.

CORAM : S.K. SHAH, J.

DATE : 19TH APRIL, 2007.

P.C.

1. Heard learned counsel on both sides. With the consent of both the parties this Appeal is taken up for final hearing at the stage of admission itself.

2. An application under section 50A was made to the Charity Commissioner for framing scheme. That application was made by Indirabai widow of Dr. Nadkarni and the Respondents. The object was to run a hospital for the poor persons. The Charity Commissioner framed a scheme. Now being aggrieved by the said Scheme, Indirabai and the present Appellant had filed a Charity Application before

the City Civil Court. Pending the said application Indirabai expired. Therefore, the present Appellant who was applicant No. 2 in the application before the City Civil Court remained on record.

3. The City Civil Court by impugned order dated 12-10-2006 rejected the application on technical grounds and without considering the merits of the matter. The ground for rejection of the application was that Indirabai had expired and legal representatives were not brought on record. It further observed that the applicant No. 2, that is, the present Appellant's right and interest cannot be adjudicated under section 72 of the Bombay Public Trust Act. It is also observed that the application abated as a result of the death of Indirabai.

4. It is a matter of fact that no legal representatives of Indirabai was brought on record. However the observation of the learned Judge of the City Civil Court that the right and interest of the applicant No.2/present Appellant cannot be adjudicated under section 72 of the Bombay Public Trust Act are erroneous. As per Section 72 of the Bombay Public Trust Act, any aggrieved person by the decision of the Charity Commissioner under

section 50A of the Bombay Public Trust Act can apply to the court to set aside the said decision of the Charity Commissioner. It is needless to say that the present Appellant who was the Applicant No. 2 has filed application before the Charity Commissioner and was aggrieved by the said order of the Charity Commissioner. As such the grievance of the Appellant were required to be looked into by the City Civil Court. As such the order passed by the City Civil Court cannot be sustained and needs to be set aside. Hence the order :

ORDER

1. The Appeal is allowed. The impugned order dated 12-10-2006 is set aside. The matter is remanded back to City Civil Court, Mumbai for deciding it on merits.

2. In the meantime, it is directed that the stay already granted shall continue. In view of the exigencies of the matter it is necessary to direct the City Civil Court to decide the application on merits by the end of August 2007.

3. It is clarified that by stay of the operation of the Scheme it does not mean that hospital to

come to a complete halt. However no major financial decision shall be taken by the trustees

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without the permission of the Charity Commissioner till the application is decided by the City Civil Court as directed earlier.

(S.K. SHAH, J.)